Volume 63
Issue 1 *Dickinson Law Review - Volume 63, 1958-1959*

10-1-1958

Liability for Charitable Institutions?

M. Ann Joachim O.P.

COMMENT

LIABILITY FOR CHARITABLE INSTITUTIONS?

BY SISTER M. ANN JOACHIM, O. P. *

Two forces, stare decisis and judicial mandate, have engendered the present conflict regarding charitable immunity. Pennsylvania takes the position that the policy is too deeply embedded in the law to be overturned by the court, and their conservative hold the line approach has shown they prefer to leave to the Legislature any change in the law with regard to immunity. On the other hand, the New Jersey Court illustrates the present trend to impose liability, and their liberal approach has willingly and without hesitancy ignored stare decisis to overrule earlier cases and perpetuate a rule of nonliability through judicial mandate until the legislature acts. Other jurisdictions faced with the problem base decisions on the trust fund theory, respondeat superior argument, or the waiver theory, all of which present an almost hopeless mass of legal entanglements. It is beyond the scope of this survey to review the entire problem of exemption or immunity, but a sampling of jurisdictions will serve to illustrate that it is not merely one of local concern.

The rule of nonliability has become firmly fixed in Pennsylvania.[1] On March 24, 1958, the Supreme Court of that State in the case of *Knecht v. St. Mary's Hospital*[2] ruled that an eleemosynary institution is immune from tort liability. In the case of *Bond v. Pittsburgh,*[3] Chief Justice Stern wrote:

> "Notwithstanding the violent criticisms that have been directed by academic legal writers against the doctrine of the immunity of charitable organizations from tort liability, and notwithstanding also the fact that there is considerable conflict in the judicial decisions on the subject among the several States, our own Commonwealth has, from the earliest times, stood firm in its adherence to the principle of immunity."

The majority opinion in the *Bond* case brought out that if and when there is to be any change in the doctrine of immunity of charitable institutions from

* Chairman, Department of Social Science, Siena Heights College, Adrian, Michigan; B.A., Siena Heights College; M.A., Loyola University; Ph.D., Magna Cum Laude, International Catholic University Friebourg, Switzerland; L.L.B., Detroit College of Law; L.L.M., University of Detroit; Member of the Bar of Michigan and the Supreme Court of the United States.

[1] Bond v. Pittsburgh, 368 Pa. 404, 84 A. 2d 328 (1951); Sieidekum v. Animal Rescue League, 353 Pa. 408, 45 A. 2d 59 (1946); Gable v. Sisters of St. Frances, 227 Pa. 254, 75 Atl. 1087 (1910); Fire Insurance Patrol v. Boyd, 120 Pa. 624, 15 Atl. 553 (1888).

[2] 392 Pa. 75, 140 A. 2d 30 (1958).

[3] 368 Pa. 404, 84 A. 2d 328 (1951).

tort liability, it ought to be effected not by the courts, but by the Legislature, which is, of course, the ultimate tribunal to determine public policy. The dissenting opinion recognized that the doctrine of immunity of charities has in recent years been recurrently criticized as outmoded, unrealistic, illogical, inconsistent, and not in public interest, but nevertheless agreed with the majority that the principle should not be changed except by legislation.

In the current *Knecht* case two justices dissented vigorously, Justice Musmanno insisted that "the fact that our Commonwealth has stood firm in its adherence to the principle of immunity does not of itself prove that it has stood firm in law and justice."[4] He pointed out that other doctrines proved to have a defective foundation and finally collapsed in spite of the firm support of the Court. The eminent jurist continued:

> "The very concept of immunity from tort responsibility runs counter to the bedrock principle of true democracy, that all persons stand equally before the law. If a charitable institution is to be exempt from liability for its torts, why should a motorist who gives a friend or even a stranger a ride in his car be liable to that guest if he mismanages the car and injures him? Is he not also engaged in a charitable act?" [5]

In his dissenting opinion, Justice Musmanno also explains his opposition to every theory of immunity. He points out that the State of New York did not find it unjust or unfair to abrogate the doctrine in the case of *Bing v. Thunig*,[6] though it had been the law of that State for many years. In that case, the plaintiff was severely burned during the course of an operation because of the alleged negligence of hospital personnel in the operating room. He brought an action in tort against the surgeon and the hospital and recovered a verdict against both. On appeal, the court announced that the hospital's liability must be governed by the same principles of law as apply to all other employers.

Justice Cohen, who also dissented in the *Knecht* case, stated that he believed the Court to be compelled to decide against the charities by a fundamental principle of our jurisprudence—that the party whose blameworthy conduct has caused injury to another must compensate the innocent and injured party therefor. By deciding to await possible legislative change so as to avoid imposing liability on charities for negligence which has occurred in the past two years (the statute of limitations in most cases) the majority

---

[4] 392 Pa. 75 at 79, 140 A. 2d 30 at 32 (1958).

[5] *Id.* at 83, 140 A. 2d at 34.

[6] 2 N.Y. 2d 656, 163 N.Y.S. 2d 12, 143 N.E. 2d 3 (1957).

of the Pennsylvania Court "would continue to permit unprotected individuals to suffer undeserved financial loss for the indefinite future." [7]

Pennsylvania, previously unanimous, now has two dissenting justices on the question of tort liability for charitable institutions by judicial mandate. Where does the road lead? How long will the doctrine of charitable immunity continue to prevail?

Clearly, modern concepts of justice are under scrutiny today more than ever before. Many judges have indicated that charitable institutions should no longer occupy the position of advantage over individuals, corporations and other forms of business organizations. Some of the reasons they give are:

1. Hospitals are not operated as "truly charitable institutions."
2. Modern conditions do not justify continuance of non-liability. Charity has become well organized.
3. Fewer courts have accepted the immunity theory in recent years, hence it is opportune for all to change.
4. Most hospitals can and do carry insurance for such contingencies. If this were made compulsory, then there would be no diversion of the assets from the charitable purposes for which they were given.
5. In view of the size and resources of such institutions and their capacity for absorbing losses, they should no longer be exempt.
6. Charity should not be permitted to inflict injury without right of redress.
7. Shortage of experienced help has caused hospitals to be lax in the selection and retention of employees.
8. Hospitals, through their employees, are not as cautious as they should be in checking equipment, et cetera.
9. An individual must be just before being generous, this should also apply to charitable organizations.
10. Charitable institutions still flourish in jurisdictions where the doctrine of immunity from tort liability has been abandoned.
11. A paying patient is not a beneficiary of the charity and it should not be presumed that he waives redress from negligence.
12. Charity would be more cautious in the performing of an "administrative" act as well as a "professional" act if it realized immunity is no longer a defense.
13. The Courts should not be asked to "protect" the negligent or exempt wrong-doers from responsibility for their acts.

---

[7] 392 Pa. at 96, 140 A. 2d at 40-41.

14. The rule of non-liability was judge-made and could be rejected in the same manner.

The recent trend of decisions in New Jersey illustrates the influence of these arguments. The New Jersey Supreme Court in its April 28, 1958 decision in three cases abrogated the charitable immunity doctrine in that state. In the case of *Dalton v. St. Luke's Catholic Church*,[8] the plaintiff alleged that she suffered injury when she fell in the vestibule of the Church on her way to Mass. She originally named the pastor of the Church and the insurance carrier, but the proceedings against them were dismissed. She claimed she was not a beneficiary of the charitable activities of the church nor a member of the parish, and she filed an affidavit stating that the pastor of the church had acknowledged:

> a. that the accident had resulted from the negligence of the church,
> b. that a mat which was usually in the vestibule was not there when the accident occurred,
> c. that the mat had been taken to another part of the church because of a bingo game that had been conducted there, and
> d. that there was a person or persons whose duty it was to see that the mat was returned to the vestibule of the church and that such persons neglected their duty.[9]

The defendant's motion for summary judgment was granted, based on the famous *D'Amato* case holding that a religious eleemosynary institution is immune from tort responsibility.[10]

The second case was begun by William Stephen Collopy against the Newark Eye and Ear Infirmary, a New Jersey Corporation.[11] The Plaintiff stated that he had entered the hospital for the purpose of having surgery performed on his eyes, that while still a post-operative patient with protective bandages over his eyes, the defendant was negligent in failing to provide guard railings and he fell out of bed with great force which caused serious injuries; furthermore, no X-rays were taken until two days later. He also alleged that he was negligently informed that he had sustained no injuries from his fall and he was discharged from the hospital, but that later he was hospitalized again for treatment of the injuries caused by the fall. Here, too, the defendant moved to dismiss the case, asserting that the Newark Eye and Ear Infirmary is a non-profit eleemosynary corporation and had immunity

---

[8] 27 N.J. 22, 141 A. 2d 273, (1958).

[9] *Id.* at 274.

[10] D'Amato v. Orange Memorial Hospital, 101 N.J.L. 61, 127 Atl. 340 (1925).

[11] Collopy v. Newark Eye and Ear Infirmary, 27 N.J. 29, 141 A. 2d 276 (1958).

from any responsibility for injuries resulting from alleged negligent conduct. The trial court entered judgment for the defendant.

The third case was brought by Lucille Benton and Thomas R. Benton against the Young Men's Christian Association of Westfield, New Jersey.[12] The wife sued for injuries sustained in a fall while descending slippery stairs. She was a member of the YWCA which had made arrangements for the use of the YMCA's swimming pool. She had her swim and on returning to the shower room, "grasped the handrail on the left and when she took her first step the stair pad slipped from under her and she fell down the stairs." [13] Testimony brought out the fact that the drains in the shower room were clogged and the steps were wet and slippery; that some of the pads were warped by dampness and others were half or completely off. The defendant petitioned for dismissal which was granted by the trial judge because he believed that the evidence established as a matter of law that the injured plaintiff had assumed the risk of injury resulting from defendant's negligence and, that in any event, the defendant's status as a charitable institution vested it with an immunity from tort responsibility to the plaintiffs.[14]

All three cases, on appeal to the New Jersey Supreme Court, were reversed with directions for a new trial, the Court stating *inter alia* that the doctrine of charitable immunity from tort liability is no longer applicable in *New Jersey.*[15] Justices Heher and Furlong dissented; each wrote separate opinions in the *Collopy* case and the reasons therein set forth applied to all three cases.

In *Dalton v. St. Luke's Catholic Church,* it was suggested that the decision in the *Collopy* case, which dealt with a hospital, should be limited to exclude churches and similar charitable institutions. But the court found no basis for excluding the Church in the *Dalton* case or the YMCA in the *Benton* case.

In view of the trend illustrated by these cases, what are the logical and defensible principles that confront this judicial threat to the common law doctrine of charitable immunity? Dissenting Justice Heher points out that our government consists of three distinct branches and one should not encroach on the powers of another unless so provided in the Constitution. In addition, most state constitutions ordained that the common law and statutory laws in favor at the time of the adoption of the Consitution should remain

[12] Benton v. Young Men's Christian Ass'n of Westfield, 27 N.J. 67, 141 A. 2d 298 (1958).
[13] *Id.* at 300.
[14] *Id.* at 299.
[15] *Ibid.*

in force unless altered or repealed by the legislature. The judicial branch is for the protection of public and private rights and interests under the law and "to that end to expound and interpret and apply the laws." Certainly it comes within the legislative branch to modify common law rules of liability.[16] Even if social and political conditions change, this does not give the judicial branch the power to abrogate the doctrines of common law any more than it would have the power to hold that a statute had been abrogated "because the reason for its enactment had ceased." [17]

Courts can not deprive a person of a common law right,[18] nor can they enact legislation.[19] Changes in the common law should be made only by the legislature.[20] Justice Heher quoting the Rhode Island Court says: "It is to be presumed that, in enacting a statute, whether civil or criminal in nature, the legislature did not intend to make any alteration in the common law, unless the language used naturally and necessarily leads to that conclusion; the intent to alter (the common law) must be clearly expressed." [21] This is a rule well established, even in New Jersey.[22]

Opponents to the doctrine of charitable immunity from tort liability say that times and circumstances have changed and they do not believe that the doctrine faithfully represents current notions of rightness and fairness. But are not all these considerations questions of policy which come within the province of the state legislatures?

Most often used by defendants, in their plea for immunity of charities, is the generally accepted principle that a trust fund cannot be rendered liable for breaches of trust by the trustee. This can easily be understood—the fund would be diverted outside the purpose of the trust. "The common good and welfare is deemed the better served by the preservation of the charitable trust fund than by its diversion to the making of compensation for injury to the beneficiaries attending the operation of the charity." [23]

Perhaps the strongest argument against judicial reversal of the doctrine is that a court's decision would be retroactive, making the charity liable for an act for which it was immune when the act was committed or injury sustained, whereas, a change by statute would be for the future.

---

[16] McGunigan v. Delaware L. & W. R. Co., 129 N.Y. 50, 29 N.E. 255 (1891).
[17] In re Hulett's Estate, 66 Minn. 327, 69 N.W. 31 (1896).
[18] State v. Parker, 1 D. Chip. 298, 300 (Vt.) 6 Am. Dec. 735 (1814).
[19] Lickle v. Boone, 187 Md. 579, 51 A. 2d 165 (1947).
[20] Cummings v. Illinois Central R.R. Co., 361 Mo. 868.
[21] Bloomfield v. Brown, 67 R.I. 452, 25 A. 2d 367 (1942).
[22] Carlo v. Newark Eye and Ear Infirmary, 16 D. Ch. 93, 141 A. 2d 291 (April 28, 1958).
[23] Collopy v. Newark Eye and Ear Infirmary, 16 D. Ch. 93, 141 A. 2d 291 (April 28, 1958).

Justice Heher recognized and reviewed all the cogent reasons for preserving the doctrine, and asks, "Would it not be the more purdent course, for the salvation of our constitutional system, the preserving of the balance of the Constitution, to adhere to the traditional judicial function and leave the essentially legislative question of policy to the popular assembly, the elected representatives of the people?" [24] The Heher dissent also refers to the *Knecht* case in Pennsylvania and reminds us of the necessity of avoiding the "injustice of making the abrogation of the rule retroactive." [25]

Justice Burling who also dissented from the New Jersey Court's triple decision, would affirm the judgment of the lower courts which entered summary judgment in favor of the defendants. He goes so far as to say "Assuming there is no constitutional restraint against judicially changing the common law principles of this State, still I deem it not the act of wisdom to presently do so with respect to the doctrine of charitable immunity." [26] Continuing, he states that critics of immunity have stressed the fact that the doctrine was first adopted in England and that it was reversed there, unbeknown to us, before it was adopted in this country. This doctrine would not have survived more than eighty years if being an English rule were the only basis for its adoption. It was adopted and it persisted because it was good public policy and declared to be the law of New Jersey in the *D'Amato* case.

> "In our opinion, public policy requires that a charitable institution maintaining a hospital be held not liable for injuries resulting to patients through the negligence or carelessness of its physicians and nurses, even if the injured person were a pay patient; payment for board, medical services and nursing in such cases going to the general fund to maintain the charity." [27]

Justice Burling commented on another argument so often used by opponents of the charitable immunity doctrine; that is, if through one's fault another is injured, he should be liable for the consequences of his wrongful act. The plaintiff may now sue a charitable institution for the personal fault of its employees, which is "vicarious liability." He brings out the possibility that the immunity doctrine might have been based on the conviction of the courts that "vicarious liability ought to be restrained within the confines of commercial activities and not spread to charitable enterprises." [28] He points out further that there were many reasons why charitable institutions were given this immunity, and there has been no proof that they are no longer

[24] *Id.* at 294.
[25] *Ibid.*
[26] *Id.* at 295.
[27] D'Amato v. Orange Memorial Hospital, 101 N.J.L. 65, 127 A. 2d 341 (1925).
[28] Collopy v. Newark Eye and Ear Infirmary, 16 D. Ch. 93, 141 A. 2d 296 (April 28, 1958).

in need of it. Have conditions in New Jersey changed so much since 1925 when the State adopted the immunity rule? The opponents to this principle surely think so, but there are many others, including stalwart members of bench and bar, who fear for the small hospitals and other charitable organizations. New York's Chief Judge Conway is quoted by Justice Burling as being deeply concerned over the fate of small institutions in his dissenting opinion in the now famous *Bing v. Thunig*[29] case:

> "In my judgment, the doctrine of the Schloendorff case has justified itself over the years and has enabled voluntary hospitals to survive. This is particularly so in small communities as distinguished from larger cities. We need both the large and small voluntary hospital. The alternative is public hospitals supported by county or State or stock company hospitals operating as businesses organized for profit."

Justice Burling's dissent poses the questions: Has anyone contemplated the consequences of these decisions imposing liability on charitable institutions; Is it not the legislative branch that should investigate these areas in large and small institutions, compile the facts and then as our duly elected representatives, decide? The courts of Kentucky, Oregon, Nebraska, Connecticut and Pennsylvania have recently stood firm against abrogating the doctrine of charitable immunity and insist, with Justice Burling, that the question is one for the legislative branch of the government.[30]

More logical questions are put to the critics of charitable immunity who say that the institution should carry insurance to protect or cover their losses. How many are insured? Could those who are not survive liability for torts committed within the last two years? How will the result of the New Jersey ruling affect insurance rates? Funds ordinarily used for better service, equipment and facilities will have to be diverted to premiums, thus leading to a gradual lessening of services. Who will benefit from the present Court action which imposes unrestricted liability?

In conclusion the justice said, "Until such time as I may be convinced by a firm foundation in fact that the overturn of the charitable immunity doctrine will, weighing all the interests involved, have a socially beneficial effect, I would uphold it." [31]

---

[29] Bing v. Thunig, 2 N.Y. 2d 656, 143 N.E. 2d 9 (1957).

[30] Roland v. Catholic Archdiocese of Louisville, 301 S.W. 2d 574 (Ky. 1957); Forrest v. Red Cross Hospital, 265 S.W. 2d 80 (1954); Langraver v. Emmanuel Lutheran Charity Board, 203 Ore. 489, 280 P. 2d 301 (1957); Muller v. Nebraska Methodist Hospital, 160 Neb. 279, 70 N.W. 2d 86 (1955); McDermott v. St. Mary's Hospital, 144 Conn. 417, 133 A. 2d 608 (1957); Knecht v. St. Mary's Hospital, 329 Pa. 75, 140 A. 2d 30 (1958).

[31] Benton v. Y.M.C.A., 27 N.J. 67, 141 A. 2d 298 (1958).

Following this line of reasoning, Connecticut has affirmed the immunity doctrine in the recent case of *McDermott v. Saint Mary's Hospital Corporation.*[32] What is of particular interest in this case is that Chief Justice O'Sullivan rendering a dissenting opinion, said:

> "I disagree with that part of the opinion which perpetuates the rule of nonliability of charitable hospitals, since the rule is out of step with modern concepts of justice." [33]

One may well question *who* is out of step since as late as 1955 an effort was made in that state's legislature to change the law, but the bill was reported unfavorably and rejected.[34] "The rejection by the legislature of a bill designed to overrule a judicial precedent by legislative enactment furnishes strong reason for the court's refusal to reverse the precedent."[35] This was recognized and the hospital as well as the doctors obtained a summary judgment in the trial court and it was affirmed by the Supreme Court.

The state of Washington seemed to have "settled" the immunity question in 1953. For sixty years the rule of immunity had been consistently followed by the Supreme Court of Washington. In *Pierce v. Yakima Valley Memorial Hospital Association*[36] a nurse injected a foreign substance into plaintiff's left arm causing pain and permanent injury. The trial court sustained the charitable immunity rule and the Supreme Court in a six to three decision held that a charitable non-profit hospital should no longer be held immune, thus overruling all previous decisions to the contrary.

Three years later the Supreme Court was faced with a similar question, but the defendant was a small charitable church instead of a large charitable hospital. Darrol Lee Lyon, an eleven year old boy, was injured riding in a church bus, while the President of Tumwater Evangelical Free Church was operating it. The trial Court dismissed the action because of the immunity of the defendant, a charitable institution. The plaintiff appealed, arguing that the trial Court's holding was contrary to the *Pierce* case. The Supreme Court of Washington protected the Tumwater Evangelical Free Church by stating that it came under the court's immunity doctrine.[37] Immunity was

---

[32] 144 Conn. 417, 133 A. 2d 608 (1957).

[33] *Id.* at 417, 133 A. 2d 609. Also also Coolbaugh v. St. Peter's Roman Catholic Church, 142 Conn. 536, 115 A. 2d 662 (1955).

[34] § 597, 1955 Sess.; Conn. Supp. Jour. 1955 Sess., 550, 563, as quoted in *Id.* at 611.

[35] Herald Publishing Co. v. Bill, 142 Conn. 53, 63, 11 A. 2d 4 (1955); Christini v. Griffin Hospital, 134 Conn. 282, 285, 57 A. 2d 262 (1948); Cohen v. General Hospital Society, 113 Conn. 188, 190, 154 Atl. 435 (1931).

[36] 43 Wash. 2d 162, 260 P. 2d 765 (1953).

[37] Darrol Lee Lyon v. Tunwater Evangelical Free Church, 47 Wash. 2d 202, 287 P. 2d 128 (1955).

practically a necessity in the latter case, yet it was called an abuse in the first. Seemingly, the Washington Supreme Court would decide each case on its merits.

Nebraska recognized that some courts have abandoned, in recent decisions, a previous declaration of absolute or qualified immunity and have now adopted a doctrine of liability. However, the Supreme Court of Nebraska was aware that any decision it made would cover not only institutions backed by trusts or foundations or great wealth, but would of necessity, cover Churches of every denomination, schools, Y.M.C.A.s, Y.W.C.A.s, Salvation Army, Boy Scouts, and many other organizations in its State—an undesirable result.

In *Muller v. Nebraska Methodist Hospital*,[38] the Court said:

> "From our observation, we believe most of these organizations still have plenty of hardships and burdens in connection with their efforts to carry out the charitable purposes for which they are organized."

Obviously the Nebraska rule is based on strong public policy.

CONCLUSION

As we have seen, New Jersey has now joined fourteen[39] other States in total liability.* Is this trend justifiable? Those opposed to immunity tell us that private charity has been displaced to a great extent by the government, both state and federal. This might be true as far as hospitals are concerned in certain sections of the country, but we certainly have not reached the stage where charitable institutions are not needed, especially those organized by religious groups whose members have dedicated their lives to nurse the sick, take care of orphans, the aged, and other truly charitable pursuits.

Should a court by judicial mandate be able to declare charitable immunity and perhaps, consequently, charities a thing of the past? It seems

---

[38] 160 Neb. 279, 70 N.W. 2d 92 (1955).

[39] Ray v. Tucson Medical Center, 72 Ariz. 22, 230 P. 2d 220 (1952); Malloy v. Fong, 37 Cal. 2d 356, 232 P. 2d 241 (1951); O'Connor v. Boulder Colorado Sanatorium Ass'n., 105 Colo. 259, 96 P. 2d 835 (1939); Durney v. St. Francis Hospital, 46 Del. 350, 82 A. 2d 753 (1951); Nicholson v. Good Samaritan Hospital, 145 Fla. 360, 199 So. 344 (1940); Haynes v. Presbyterian Hospital Ass'n., 241 Iowa 1269, 45 N.W. 2d 151 (1950); Noel v. Menninger Foundation, 175 Kan. 751, 267 P. 2d 934 (1954); Swigerd v. City of Ortonville, 246 Minn. 339, 75 N.W. 2d 217 (1956); Kardulus v. City of Dover, 99 N.H. 359, 111 A. 2d 327 (1955); Dalton v. St. Luke's Catholic Church, 27 N.J. 22, 141 A. 2d 273 (1958); Collopy v. Newark Eye and Ear Infirmary, 27 N.J. 29, 141 A. 2d 276 (1958); Benton v. Y.M.C.A., 27 N.J. 67, 141 A. 2d 298 (1958); Bing v. Thunig, 2 N.Y. 2d 656, 163 N.Y.S. 2d 3, 12, 143 N.E. 2d 3 (1957); Avellone v. St. John's Hospital, 165 Ohio St. 467, 135 N.E. 2d 410 (1956); Gable v. Salvation Army, 186 Okla. 187, 100 P. 2d 244 (1950); Jones v. Baylor Hospital—Tex. Civ. App.—284 S.W. 2d 929 (1956); Foster v. Roman Catholic Diocese of Vt., 116 Vt. 124, 70 A. 2d 230 (1950).

* *Editor's Note:* The New Jersey Legislature has enacted a statute which broadly reinstates, at least for a limited period, the prior New Jersey rule that a charity is not liable to a "beneficiary." P.L. 1958, C. 131; R.S. §§ 16: 1-16: 1-53. However, "any nonprofit corporation, society or association organized exclusively for hospital purposes" is made liable to a "beneficiary" up to $10,000 for one "accident." § 16: 1-49. The statute was approved on July 22, 1958, and took effect immediately, but expires on June 30, 1959.

better to agree with the Court in *Bond v. City of Pittsburgh* that, "If and when there is to be any change in the doctrine of the immunity of charitable institutions from tort liability, it ought to be effected, not by the courts, but by the legislature, which is, of course, the ultimate tribunal to determine public policy." [40]

Many charities have changed in size and scope in the past decade, but they are still charitable. Immunity, in whole or in part can truly be a necessity with one set of facts and perhaps an abuse in another. We should take a long range view of the consequences of litigation. Perhaps the good of the public is at times superior to the good of the individual and the "truly charitable institution" should continue to be protected in whole or in part.

---

[40] 368 Pa. 404 at 408, 84 A. 2d 328 at 330 (1951).